Intermec Technologies Corp. v. Palm, Inc.
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EXHIBIT A

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From: Abrams, Robert
Sent: Tuesday, March 10, 2009 1:37 PM
To: 'jjacobson@wsgr.com'; 'swalsh@wsgr.com'; _nmanne@susmangodfrey.com; 'rhess@susmangodfrey.com'
Cc: Abrams, Robert; Isaacson, Thomas
Subject: Draft Joint Case Management Statement

Attachments: Joint Statement - Plaintiffs' Draft - 3 10 09.doc

Joint Statement - Plaintiffs' ...

urther to the Court's Order of February 2nd setting the April 9th case management conference, I enclose a draft of plaintiffs' portions of the joint case management statement, which we are required to file by April 2nd. I ask that you add your responses to this document in the spaces provided. A substantial number of other plaintiffs are on board with this draft and, after you have included your portion and we have had an opportunity to work out an agreement, I will attempt to get approval from all California plaintiffs (akin to what we did in submitting a joint response to the JPML).

In addition to the submission of a joint report, the Court's February 2nd order requires us to meet and confer. I would like to do so as soon as you can so that we can coordinate the filing with other plaintiffs and attempt to work out any disagreements.

I would like to set up a telephone conference with you to discuss this and set up a schedule.
Thanks. Bob

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

Andrea Resnick et al. v. Walmart.com, et al. (Case No. C 09-0002 PJH) Michael O'Connor v. Walmart.com, et al. (Case No. C 09-0096 PJH) Sarah Endzweig v. Walmart.com, et al. (Case No. C 09-0111 PJH) Christopher Schmitz v. Walmart.com, et al. (Case No. C 09-0116 PJH) Scott Lynch, et al. v. Walmart.com, et al. (Case No. C 09-0138 PJH) Jonathan Groce, et al. v. Netflix, Inc., et al. (Case No. C 09-0139 PJH) Liza Sivek v. Walmart.com, et al. (Case No. C 09-0156 PJH)	**Related Case File No. C 09-0002 PJH** **JOINT CASE MANAGEMENT STATEMENT** **Date: April 9, 2009** **Time: 2:30 p.m.** **Courtroom 3, 17th Floor** **Hon. Phyllis J. Hamilton**

Armond Faris v. Netflix, Inc., et al. (Case No. C 09-0180 PJH)	
Suzanne Slobodin v. Netflix, Inc., et al. (Case No. C 09-0225 PJH)	
Katherine Anthony, et al. v. Walmart.com, et al. (Case No. C 09-0236 PJH)	
Melanie Polk-Stamps v. Netflix, Inc., et al. (Case No. C 09-0244 PJH)	
Richard Sheeler, Jr. v. Walmart.com, et al. (Case No. C 09-0274 PJH)	
Cathleen Chapman v. Netflix, Inc., et al. (Case No. C 09-0294 PJH)	
Michael Orozco v. Netflix, Inc., et al. (Case No. C 09-0297 PJH)	
Linda Landels, et al. v. Netflix, Inc., et al. (Case No. C 09-0340 PJH)	
Sarah Grime v. Netflix, Inc., et al. (Case No. C 09-0349 PJH)	
Douglas Meyer v. Walmart.com, et al. (Case No. C 09-0361 PJH)	
Laura Randall v. Walmart.com, et al. (Case No. C 09-0368 PJH)	
Frank Hirsch v. Netflix, Inc., et al. (Case No. C 09-0375 PJH)	
Melanie Miscioscia v. Netflix, Inc., et al. (Case No. C 09-0377 PJH)	
James Chatelain v. Netflix, Inc., et al. (Case No. C 09-0391 PJH)	
Patras v. Netflix, Inc., et al. (Case No. C 09-00378 PJH)	
Weiner v. Walmart.com USA LLC, et al. (Case No. C 09-00398 PJH)	
Millrood v. Walmart.com USA LLC, et al. (Case No. C 09-00399 PJH)	
Kober v. Walmart.com USA LLC, et al. (Case No. C 09-00400 PJH)	
Lacabe v. Walmart.com USA LLC, et al. (Case No. C 09-00402 PJH)	
Roy v. Netflix, Inc., et al. (Case No. C 09-00434 PJH)	
Bruno, et al. v. Walmart.com USA LLC, et al. (Case No. C 09-00445 PJH)	
Zaker v. Netflix, Inc., et al. (Case No. C 09-00447 PJH)	
Parikh v. Netflix, Inc., et al. (Case No. C 09-00496 PJH)	
Johnson v. Walmart.com USA LLC, et al. (Case No. C 09-00553 PJH)	

Gannon v. Walmart.com USA LLC, et al. (Case No. C 09-00554 PJH) Williams v. Netflix, Inc., et al. (Case No. C 09-00678 PJH)	

Pursuant to Civil Local Rule 16-9 and the Court's order of February 2, 2009, as well as the Federal Rules of Civil Procedure, Rules 16(b) & 26(f), the Parties to the above-captioned actions hereby submit this Joint Case Management Statement in advance of the April 9, 2009 Case Management Conference.

1. JURISDICTION AND SERVICE

a. Plaintiffs' Statement

This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331 & 1337 and 15 U.S.C. §§1-2, 15 & 26. There are no personal jurisdiction issues for any of the Defendants. All Defendants have been served with a summons in one or more of the actions, or their respective counsel have stipulated to accept service on their behalf. Counsel for Defendants have agreed to accept service of the Consolidated Amended Complaint on behalf of their clients.

b. Defendants' Statement

2. FACTS

a. Plaintiffs' Statement

On or about May 19, 2005, Netflix, Wal-Mart Stores, and Walmart.com, a wholly owned subsidiary of Wal-Mart Stores, entered into a *per se* illegal conspiratorial agreement to divide the markets for the sales and online rentals of DVDs in the United States ("Market Division Agreement"), with the purpose and effect of monopolizing and unreasonably restraining trade in the Online DVD Rental Market in the United States in violation of Sections 1 and 2 of the Sherman Antitrust Act, 15 U.S.C., §§ 1-2.

The meetings that led to the illegal conspiracy began as early as January 2005, when Reed Hastings, the CEO of Netflix, called John Fleming, then the CEO of Walmart.com, to invite him to dinner to discuss the online DVD rental and DVD sales markets. At the time (and to this day), Wal-Mart and Netflix were far and away the dominant leaders in the markets for DVD sales and online

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rentals, respectively, with Wal-Mart controlling about 40% of all DVD sales in the U.S. and Netflix having about a 75% market share of online DVD rentals in the U.S. Fleming, who reported directly to Wal-Mart Stores' CEO Lee Scott, accepted Hastings' invitation; the two thereafter met and, as a result of the meetings and exchanges that followed, Defendants entered into the alleged illegal conspiracy to divide the markets for the sales of DVDs and online rentals of DVDs.

At the time of their initial meeting and prior to entering into the Market Division Agreement, Netflix and Walmart.com were direct competitors in renting DVDs online, and all three Defendants were potential competitors in selling new DVDs to consumers. Under the Market Division Agreement, however, Netflix, Wal-Mart Stores, and Walmart.com agreed that Walmart.com would stop competing with Netflix in the online rental market. Netflix agreed that it would not sell new DVDs, as it was well-positioned and otherwise had the unilateral economic incentive to do, but instead would promote the DVD sales of Wal-Mart Stores and Walmart.com. Since entering into the Market Division Agreement, neither Wal-Mart Stores nor Walmart.com has rented DVDs online and Netflix has not sold new DVDs. As a result of the Market Division Agreement among competitors, Netflix was able to charge higher prices for its DVD rental subscriptions and, in fact, did so. The Market Division Agreement also served to entrench and enhance Defendants' dominant market positions and otherwise cause harm to competition, including enabling Netflix to charge higher subscription prices for online DVD rentals than it would have had they not entered into the agreement. Plaintiffs and all other similarly situated consumers in fact paid higher subscription prices to Netflix.

This case is brought as a class action on behalf of all consumers in the United States who, during the period May 19, 2005 to the present, paid a subscription fee to rent DVDs from Netflix. Plaintiffs bring this action on behalf of themselves and other similarly situated consumers nationwide under Sections 4 and 16 of the Clayton Antitrust Act. Plaintiffs seek redress in the form of treble damages and other relief for their injuries resulting from Defendants' violations of law and seek a declaration that the Market Division Agreement is null and void.

b. Defendants' Statement

3. LEGAL ISSUES

a. Plaintiffs' Statement

Plaintiffs believe that the primary legal issues include, but are not limited to, the following:

i. Whether Defendants' alleged contract, combination, and conspiracy violated Section 1 of the Sherman Act, 15 U.S.C. § 1;

ii. Whether the alleged contract, combination, and conspiracy violated Section 2 of the Sherman Act, 15 U.S.C. § 2; and

iii. Whether the action may be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

b. Defendants' Statement

4. MOTIONS

a. Plaintiffs' Statement

There have been several related case motions and stipulations to extend the time in which Defendants may answer or otherwise respond to the various related complaints, all of which have been granted. There are no pending motions in this Court, although there is a proceeding pending before the Judicial Panel on Multidistrict Litigation as set forth in Item 14, below.

Plaintiffs intend to file a motion for class certification. The proposed timing for filing a motion for class certification is set forth in Plaintiffs' Proposed Schedule submitted herewith as Exhibit A.

b. Defendants' Statement

5. AMENDMENT OF PLEADINGS

a. Plaintiffs' Statement

Plaintiffs intend to file a Consolidated Amended Complaint.

b. Defendants' Statement

6. EVIDENCE PRESERVATION

a. Plaintiffs' Statement

Plaintiffs' counsel have notified their clients of their preservation obligations under law. As Plaintiffs are individual consumers whose most relevant records are maintained by one or more Defendants, it is Defendants' preservation efforts that are of paramount importance. To effectuate the preservation of all documents that could be reasonably calculated to lead to the discovery of admissible evidence in the actions, the parties are negotiating a proposed preservation order that they intend to provide to the Court in the near term.

b. Defendants' Statement

7. DISCLOSURES

a. Plaintiffs' Statement

The parties have not yet exchanged initial disclosures under Fed. R. Civ. P. 26. Plaintiffs proposed timing for the exchange of such disclosures is set forth in Exhibit A.

b. Defendants' Statement

8. DISCOVERY

a. Plaintiffs' Statement

In accordance with the Court's Order of February 2, 2009, the parties held a Rule 26(f) conference on [INSERT DATE]. There has been no discovery taken to date. As reflected in Exhibit A, Plaintiffs have proposed dates for fact and expert discovery in this matter. Discovery of the proposed class representatives should be minimal, while discovery of the corporate Defendants, as well as third parties, may be substantial. Plaintiffs do not believe discovery should be limited, other than as provided for by the Federal Rules of Civil Procedure and the Court's Civil Local Rules, except that 1) each side shall be limited to a total of 50 fact depositions, without leave of Court, and 2) that any four depositions of each of the Defendants may be extended to a duration of 14 hours each, without leave of Court.

b. Defendants' Statement

9. CLASS ACTIONS

a. Plaintiffs' Statement

These actions are brought as class actions. In accordance with Civil Local Rule 16-9(b) and without prejudice to extending, revising or amending the following, Plaintiffs state:

1. Plaintiffs bring the actions on their own behalf and as class actions under Rules 23(a), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of all members of the proposed Class, defined as:

> Any person in the United States that paid a subscription fee to Netflix to rent DVDs, on or after May 19, 2005 up to the present. Excluded from the Class are government entities, Defendants, their co-conspirators and their representatives, parents, subsidiaries, and affiliates.

2. The Class numbers in the millions, the exact number and identities of the members being known by Defendants.

3. The Class is so numerous and geographically dispersed that joinder of all members is impracticable.

4. There are questions of law and fact common to the Class and the members thereof. These common questions relate to the existence of the conspiracy alleged, and to the type and common pattern of injuries sustained as a result thereof.

5. The questions of law and fact common to members of the Class predominate over any questions affecting only individual members, including the legal and factual issues relating to liability and damages.

6. Plaintiffs are members of the Class. Their claims are typical of the claims of other members of the Class, and they will fairly and adequately protect the interests of the members of the Class. Their interests are aligned with, and not antagonistic to, those of the other members of the Class.

7. Plaintiffs are represented by competent counsel who are experienced in class action antitrust litigation.

8. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Class treatment will permit the adjudication of relatively small claims by members of the Class who otherwise could not afford to litigate antitrust claims such as are asserted in this Complaint. This class action presents no difficulties of management that would preclude its maintenance as a class action.

9. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

10. The Plaintiffs' proposed schedule for class certification practice is set forth in Exhibit A.

b. Defendants' Statement

10. **RELATED CASES** [UPDATE PRIOR TO SUBMISSION]

a. Plaintiffs' Statement

All cases filed within the Northern District of California are pending before this Court. A schedule of related cases pending in other jurisdictions is submitted herewith as Exhibit B. As noted above, there is a proceeding pending before the Judicial Panel on Multidistrict Litigation as set forth in Item 14, below.

b. Defendants' Statement

11. RELIEF

a. Plaintiffs' Statement

Plaintiffs seek treble damages, attorneys' fees and costs, and injunctive relief for Defendants' violations of law. The precise amount of damages sought and the bases on which such damages will be calculated are not yet known.

b. Defendants' Statement

12. SETTLEMENT AND ADR

a. Plaintiffs' Statement

Plaintiffs believe there is a realistic possibility of settling the case and would welcome commencement of a settlement dialogue with any Defendant. Plaintiffs also believe that, at an appropriate time, this case could benefit from ADR. However, it is premature to commence ADR before Plaintiffs have taken at least some discovery.

b. Defendants' Statement

13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES

a. Plaintiffs' Statement

Plaintiffs have not so consented.

b. Defendants' Statement

14. OTHER REFERENCES

a. Plaintiffs' Statement

A proceeding is pending before the Judicial Panel on Multidistrict Litigation. The matter has been fully briefed and oral argument was heard on March 26, 2009. All parties agree that the cases from this Court and the other federal district courts should be consolidated and that it is virtually certain that the Panel will order such consolidation.

b. Defendants' Statement

15. NARROWING OF ISSUES

a. Plaintiffs' Statement

Plaintiffs believe there is no prospect that this case will be resolved on summary judgment, as Plaintiffs will have sufficient evidence to take their case to a jury. There may well be summary dismissal of such affirmative defenses as may be asserted by Defendants. Plaintiffs' proposed dates for the filing of dispositive motions and/or cross motions, oppositions, and replies are set forth in Exhibit A.

b. Defendants' Statement

16. EXPEDITED SCHEDULE

a. Plaintiffs' Statement

Plaintiffs do not believe that these actions are susceptible to an expedited schedule.

b. Defendants' Statement

17. SCHEDULING

a. Plaintiffs' Statement

Plaintiffs' proposed dates for designation of experts, discovery cutoff, hearing of dispositive motions, and a pretrial conference are set forth in Exhibit A.

b. Defendants' Statement

18. TRIAL

a. Plaintiffs' Statement

Plaintiffs demand trial by jury. Plaintiffs believe they will have sufficient evidence to take their case to a jury. Under Plaintiffs' proposed schedule Trial and Post-Trial Motion Practice would be concluded within 28 months from consolidation. A proposed time for trial is set forth in Exhibit A.

b. Defendants' Statement

19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

a. Plaintiffs' Statement

Plaintiffs all have filed a "Certification of Interested Entities or Persons" required by Civil Local Rule 3-16. Plaintiffs hereby restate that other than those persons or entities disclosed by Defendants, there are no other persons, firms, partnerships, corporations (including parent corporations) or other entities known by the party to have either: (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding.

b. Defendants' Statement

20. OTHER MATTERS AS MAY FACILITATE THE JUST, SPEEDY AND INEXPENSIVE DISPOSITION OF THIS MATTER

a. Plaintiffs' Statement

b. Defendants' Statement

DATED: April 2, 2009

Respectfully Submitted,

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BY:________________________________

EXHIBIT A

PARTIES' PROPOSED SCHEDULES

PLAINTIFFS' PROPOSED SCHEDULE

1. A Consolidated Amended Complaint shall be filed no later than 30 calendar days after the case management conference or the Order of the Judicial Panel on Multidistrict Litigation centralizing this case, whichever is later.
2. Initial Disclosures shall be exchanged no later than 7 calendar days after the filing of a Consolidated Amended Complaint.
3. The period for fact discovery shall commence upon the exchange of Initial Disclosures.
4. Defendants shall Answer or otherwise respond to the Consolidated Amended Complaint no later than 30 calendar days subsequent to the filing of the Consolidated Amended Complaint.
5. Plaintiffs shall file a Motion for Class Certification and any accompanying expert disclosures no later than 180 calendar days subsequent to the filing of the Consolidated Amended Complaint.
    a. Oppositions: +45 calendar days
    b. Replies: +30 calendar days
6. Parties may be added no later than 30 calendar days prior to the close of Fact Discovery.
7. Fact Discovery shall close 180 calendar days after the filing of the Motion for Class Certification
8. Parties with burden of proof shall make Opening Expert Disclosures under Fed. R. Civ. P. 26(a)(2) no later than 30 calendar days after the close of fact discovery.
    a. Responsive Expert Disclosures: +30 calendar days
    b. Rebuttal Expert Disclosures: +15 calendar days
9. Expert discovery shall close 90 calendar days after the close of Fact Discovery.
10. Opening Summary Judgment and Daubert motions shall be filed no later than 20 calendar days after the close of Expert Discovery.

a. Oppositions: +45 calendar days

b. Replies: +30 calendar days

11. A Final Pre-Trial Conference shall be held no later than 120 calendar days after the close of Expert Discovery.

a. Motions in limine and pretrial memoranda: + 30 calendar days

b. Joint Proposed Pretrial Order +30 calendar days

12. Trial shall begin within 75 calendar days after filing the Final Pre-Trial Conference.

a. Trial: 14 calendar days to verdict.

b. Post-trial motions shall be filed no later than 30 calendar days after verdict has been reached.

i. Oppositions: +30

ii. Replies +15

DEFENDANTS' PROPOSED SCHEDULE

EXHIBIT B

RELATED CASES PENDING IN OTHER JURISIDICTIONS

	CASE TITLE	DATE FILED	CASE NO.	DISTRICT
1.	MaGee v. Netflix, Inc., et al.	1/16/09	2:09-cv-00070	Western District of Washington
2.	Michalski, et al. v. Netflix, Inc., et al.	1/23/09	0:09-cv-00158	District of Minnesota
3.	Boynton v. Walmart.com USA LLC, et al.	1/27/09	1:09-cv-00026	District of New Hampshire
4.	Mayer v. Walmart.com USA LLC, et al.	1/28/09	1:09-cv-00028	District of Vermont
5.	Christina v. Netflix, Inc., et al.	2/2/09	3:09-cv-00059	Middle District of Louisiana
6.	Hotard v. Netflix, Inc., et al.	2/3/09	2:09-cv-01938	Eastern District of Louisiana
7.	Levin v. Walmart.com USA LLC, et al.	2/5/09	1:09-cv-00744	Northern District of Illinois
8.	Touchton v. Netflix, Inc., et al.	2/6/09	2:09-cv-00241	Northern District of Alabama
9.	Kopera v. Netflix, Inc., et al.	2/6/09	2:09-cv-00242	Northern District of Alabama
10.	Walters, et al. v. Netflix, Inc., et al.	2/9/09	2:09-cv-00110	Southern District of West Virginia
11.	Karatz v. Netflix, Inc., et al.	2/9/09	1:09-cv-00136	Southern District of Indiana
12.	Bowles v. Netflix, Inc., et al.	2/12/09	8:09-cv-00250	Middle District of Florida
13.	Shafeek v. Netflix, Inc., et al.	2/13/09	1:09-cv-00617	Eastern District of New York
14.	Wagner v. Netflix, Inc., et al.	2/16/09	3:09-cv-00360	Northern District of Ohio
15.	Jones v. Netflix, Inc., et al.	2/17/09	3:09-cv-00131	Southern District of Illinois
16.	Ortiz-Cardona v. Netflix, Inc., et al.	2/18/09	3:09-cv-01157	District of Puerto Rico
18.	Cleary v. Walmart.com USA LLC, et al.	3/5/09	1:09-cv-1383	Northern District of Illinois (Chicago)
	[UPDATE PRIOR TO SUBMISSION]			